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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/684,412	10/15/2003	James R. Veale	P24039	4403
7055	7590	05/31/2005		
GREENBLUM & BERNSTEIN, P.L.C. 1950 ROLAND CLARKE PLACE RESTON, VA 20191			EXAMINER SODERQUIST, ARLEN	
			ART UNIT	PAPER NUMBER
			1743	
DATE MAILED: 05/31/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/684,412

Applicant(s)

VEALE ET AL.

Examiner

Arlen Soderquist

Art Unit

1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18-38 is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2-6-04</u> . | 6) <input type="checkbox"/> Other: ____ |

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1. Claims 2 and 6-7 objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. In claims 2 and 6-7, the limitations are directed to the sealed reference container(s) that are not positively recited as an element of the device. Therefore they fail to further limit that device.

2. Claims 1-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1 it is not clear how the device is configured to alternately convey the test and reference containers since they are not positively recited as a structural element of the device. For examination purposes the claim is being treated as a conveyer configured to convey a plurality of containers and a sensor disposed along the conveyer and including a laser and a detector. In claim 9 it is not clear if the plurality of reference are affixed to the starwheel to allow the alternately convey language of claim 1. Additionally, claim 2 indicates that the at least one reference container comprises a plurality, therefore it is not clear why the at least one language is used in the claim. Claim 15 has problems that are similar to claim 9.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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4. Claims 1-2, 7, 11 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kato (US 6,055,876) in view of Nix (US 5,473,161), Rae (WO 96/02835) or Gross (US 5,315,108). In the patent Kato teaches a non-contact type inspection system for inspecting sample conveyed on a conveyer system. Column 1, lines 37-44 teach that the device is used for inspecting glass or plastic container such as ampoules or vials containing chemicals food or drink to determine if a foreign matter is contained therein. The device uses a light source and detector mounted on rotatable tables (14a,14b) which can be used to create a situation that the containers can be inspected as if they were still (column 5, lines 28-67. Column 11, lines 14-20 teach that other types of light or radiation can be used to inspect the containers. Kato does not teach the light being from a laser.

In the patent Nix teaches a method for testing (inspecting) the amount of carbon dioxide (carbonation) in a container having a carbonated beverage therein. Column 3, teaches the use of a laser in the measurement of the carbon dioxide in the containers.

In the published application Rae teaches the analysis of the headspace of a sealed container (vial) with a laser. The containers have chemicals (pharmaceuticals) therein and the headspace is being analyzed for the presence of oxygen which can be detrimental to the chemicals in the vials.

In the patent Gross teaches a device for acting upon moving containers that is substantially similar to the Kato device. The device uses a laser to inspect the containers with as high a frequency as possible (column 1, lines 37-42).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the lasers of Nix, Rae or Gross into the inspection device of Kato because of the several uses taught by Nix, Rae and Gross for inspection of moving containers.

5. Claims 3-6,8-10,12-16 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims. The art of record fails to teach or fairly suggest the structural limitations of these claims in combination with the claims from which they depend.

6. Claims 18-38 are allowed. The art of record fails to teach or fairly suggest the method as claimed and in particular the alternate nature of the plurality of test samples and the at least one sealed reference container through a zone of the inspection region by the container conveyer.

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7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The additional art relates to analysis of the headspace of containers and conveyers for containers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arlen Soderquist whose telephone number is (571) 272-1265. The examiner can normally be reached on Monday-Thursday and Alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (571) 272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Arlen Soderquist

ARLEN SODERQUIST
PRIMARY EXAMINER